

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

August 4, 2000

Dear Xxxxx:

This letter is in response to your letter dated April 24, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are enclosing a copy of the Certificate of Registration issued by the Illinois Department of Revenue. It will be observed from the same that for the purposes of Illinois Sales Tax, we are being treated as a retailer, selling tangible personal property at retail in Illinois.

We are in the business of Fleet Management. We arrange for our customers, the service of maintenance and repair of their fleets of vehicles. These services are not rendered directly by us, but by various automobile service/repair shops.

In view of our classification as a retailer, we have advised these shops not to charge us Illinois Sales Tax in their invoices for spare parts and other materials used by them in the service/repair of the vehicles. We have been levying our customers the applicable sales tax and remitting the amount so charged to the Illinois Department of Revenue. In order to explain the present procedure, we are enclosing herewith copies of the following:

- (i) Invoice from an Illinois Vendor for \$6,086.00. It will be seen that the vendor has not charged the applicable sales tax;
- (ii) Our check to the vendor for the above invoice;
- (iii) Our Invoice to the Customer showing breakup of parts and labor. It will be seen from the invoice that we have charged our Customer the applicable 8.25% sales tax.

We wish to further clarify that we do not add any additional parts/repairs to the job already done by the shops. The services rendered by us are in the nature of arranging for maintenance/repair and also providing billing and remittance facilities through us. Under the circumstances, we do not fall in the category of retailer. We are only a **'pass through'** business for the purposes of Sales Tax.

Please, therefore, issue appropriate orders for treating us as a 'pass through' business. The automobile service/repair shops will charge the Illinois Sales Tax in their invoices and we will pay the tax to the shops on behalf of our customers. Our invoices to our Customers will clearly state,

'Reimbursement of Sales Tax paid by COMPANY to the vendor/supplier.'

Please advise us of your ruling.

We are unable to grant you the ruling you request. Because of the limited amount of information provided in your letter, the precise nature of the transactions you generally describe is difficult to ascertain. The following is general information which may be useful in addressing the situation you appear to describe in your letter.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify, as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making

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purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax.

The situation you describe appears to be a multi-service situation. Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301 (a), enclosed.

When both primary servicemen and secondary servicemen are registered, primary servicemen may give a Certificate of Resale to registered secondary servicemen for any tangible personal property purchased. Primary servicemen could then collect Service Use Tax from their customers based upon the separately stated selling price of the property or 50% of the bill to the service customers.

If primary servicemen are registered and de minimis, they may choose to remit Service Occupation Tax to the Department based upon their cost price of tangible personal property purchased from secondary servicemen. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Primary servicemen provide the secondary servicemen with Certificates of Resale if the secondary servicemen are registered, and collect Service Use Tax from customers on their cost price.

Please note that Public Act 89-675, effective August 14, 1996, states that if an unregistered de minimis serviceman subcontracts service work to an unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis, 35 ILCS 110/2 and 115/2.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.